

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0331

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 51** - 01/21/2004

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Certification Board for Alcohol
2 and Drug Professionals and to provide for its powers and duties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the South Dakota Certification Board for Alcohol and Drug Professionals;
6 and

7 (2) "Practitioner," a person certified under this Act in the practice of chemical
8 dependency counseling or prevention services who holds himself or herself out to the
9 public by any title or description of services which uses the words certified chemical
10 dependency counselor or certified prevention specialist or derivatives thereof.

11 Section 2. That § 36-32-11 be amended to read as follows:

12 36-32-11. No person may represent himself or herself as a licensed or certified chemical
13 dependency counselor (CCDC) or certified prevention specialist unless he the person is certified
14 by the South Dakota ~~Chemical Dependency Counselor~~ Certification Board for Alcohol and Drug
15 Professionals.



1 Section 3. There is hereby created the South Dakota Certification Board for Alcohol and
2 Drug Professionals that consists of nine members. One member shall be a lay member and
3 resident of the state; one member shall be an educator from an addiction studies postsecondary
4 education program; four members shall be certified chemical dependency counselors in active
5 practice within the state and broadly representing a cross section of the profession of chemical
6 dependency counseling; one member shall be a certified prevention specialist; one member shall
7 be an attorney licensed to practice law in the State of South Dakota; and one member shall be
8 a certified practitioner who is an enrolled member of a tribe. This board replaces the functions
9 previously performed by the South Dakota Chemical Dependency Counselor Certification
10 Board, a private nonprofit entity doing business as the Certification Board for Alcohol and Drug
11 Professionals.

12 Section 4. The Governor shall appoint the members to the board. Initial appointments to the
13 board shall be staggered for terms of one, two, and three years, with three members appointed
14 for one year, three members appointed for two years, and three members appointed for three
15 years. Thereafter, appointments shall be for terms of three years beginning on the first day of
16 July.

17 Section 5. The Governor may remove any member of the board for cause. If there is a
18 vacancy on the board caused by the death, resignation, removal from the state of any member,
19 or for any other reason, the Governor shall appoint a new member to serve the unexpired term.
20 No member of the board may serve for more than two successive full terms.

21 Section 6. The initial meeting of the board shall occur at Pierre, South Dakota, within one
22 month after the appointment of the ninth member. The board shall elect a chair, vice-chair, and
23 a secretary-treasurer from its members. Thereafter the board shall elect officers annually. The
24 board shall meet at least once a year at a place and time determined by the chair. However, a

majority of the board may call a meeting without the assent of the chair.

Section 7. The secretary of the board shall provide for taking and keeping the minutes of all board meetings.

Section 8. A majority of board members constitutes a quorum. A majority vote of those present constitutes a decision of the entire board.

Section 9. The board is within the Department of Human Services. The department shall provide all administrative functions other than those of the board member serving as secretary. The expenses of the department shall be paid from the account established in section 10 of this Act, on vouchers approved by the secretary of human services. The board shall submit an annual report and such records, information, and reports in the form and at such times as required by the secretary of human services.

Section 10. The board may accept any funds which may be made available to it from any source. All funds received by the board shall be paid to the state treasurer on or before the tenth day of the next month. The state treasurer shall keep the money in a separate account for the board. The money in that account is continuously appropriated to the board for administering and enforcing this Act. The board may expend funds for administrative, consultant, secretarial, clerical, and stenographic services for the board. No expense may be incurred by the board exceeding the total money collected by the board under the provisions of this Act. The board shall transfer preexisting funds of the South Dakota Chemical Dependency Counselor Certification Board the entity doing business as the Certification Board for Alcohol and Drug Professionals into the account established in this Act.

Section 11. The board members shall be paid pursuant to § 3-9-2.

Section 12. No member of the board is civilly liable for any act taken while acting within the scope of the member's official duties as a board member.

Section 13. The board shall:

- (1) Through its policies and activities, and by rules promulgated pursuant to chapter 1-26, establish standards for, and promote, the qualified practice of chemical dependency prevention and counseling services;
- (2) Be responsible for all disciplinary proceedings under this Act;
- (3) Establish, by rules promulgated pursuant to chapter 1-26, educational, training and competency, and ethical standards governing the examination and practice of practitioners under this Act;
- (4) Examine, or cause to be examined, for competency, eligible applicants, for certification to practice chemical dependency prevention and counseling services;
- (5) Issue certificates to those applicants who successfully complete the certification requirements and renew the certifications of those practitioners who continue to meet the certification standards of this Act;
- (6) Register, pursuant to rules promulgated pursuant to chapter 1-26, those applicants who successfully complete the certification requirements; and
- (7) Establish and collect, pursuant to rules promulgated pursuant to chapter 1-26, fees for certification, registration, examination, continuing education, certificate renewal, and reinstatement.

Section 14. The board may promulgate rules, pursuant to chapter 1-26, to provide fees for all examinations, certifications, recognitions, renewals, services, and charges authorized by this Act. The fees may not exceed the following maximums:

- (1) Application materials or portfolio reviews, twenty-five dollars;
- (2) Chemical dependency counselor certification application and examination fee, two hundred fifty dollars;

- 1 (3) Chemical dependency counselor certification retest fee, two hundred dollars;
- 2 (4) Chemical dependency counselor certification renewal fee, one hundred fifty dollars;
- 3 (5) Chemical dependency counselor certification level upgrade, one hundred fifty
- 4 dollars;
- 5 (6) Chemical dependency counselor replacement or duplicate certificate, fifteen dollars;
- 6 (7) Chemical dependency counselor certification replacement card, five dollars;
- 7 (8) Chemical dependency counselor trainee recognition fee, one hundred fifty dollars;
- 8 (9) Chemical dependency counselor trainee renewal fee, one hundred dollars;
- 9 (10) Chemical dependency counselor trainee replacement or duplicate certificate fee,
- 10 fifteen dollars;
- 11 (11) Prevention specialist certification application and examination fee, two hundred fifty
- 12 dollars;
- 13 (12) Prevention specialist certification retest fee, two hundred dollars;
- 14 (13) Prevention specialist certification renewal fee, one hundred fifty dollars;
- 15 (14) Prevention specialist replacement or duplicate certificate, fifteen dollars;
- 16 (15) Prevention specialist certification replacement card, five dollars;
- 17 (16) Prevention specialist trainee recognition fee, one hundred fifty dollars;
- 18 (17) Prevention specialist trainee renewal fee, one hundred dollars;
- 19 (18) Prevention specialist trainee replacement or duplicate certificate fee, fifteen dollars;
- 20 (19) Trainee intern replacement certificate, fifteen dollars;
- 21 (20) Trainee intern replacement certificate, fifteen dollars;
- 22 (21) Registration as a continuing education provider, twenty-five dollars; and
- 23 (22) Mailing labels charge, one hundred dollars.

24 Section 15. A chemical dependency counselor trainee may perform chemical dependency

1 counseling services so long as the trainee is working under the supervision of a certified
2 chemical dependency counselor.

3 Section 16. A prevention specialist trainee may perform prevention services so long as the
4 trainee is working under the supervision of a certified prevention specialist or certified chemical
5 dependency counselor, level II or III.

6 Section 17. The board may use its own staff or employ certified chemical dependency
7 counselors, certified prevention specialists, agents, or investigators to assist in the enforcement
8 of this Act or any rule promulgated by the board. Any person violating the provisions of this Act
9 may be enjoined from further violations by an action brought by the state's attorney of the
10 county where the violations occurred or by an action brought by any citizen in the state. The
11 attorney general, the board, or the state's attorney may apply to the circuit court for the county
12 in which a violation of this Act is alleged to have occurred for an order enjoining or restraining
13 the commission or continuance of the acts. The board may authorize a hearing examiner to
14 conduct the hearing required to determine a violation of this Act.

15 Section 18. The board may, if it deems best for the enforcement of this Act or in the conduct
16 of its duties, employ an attorney designated by the attorney general and subject to the
17 supervision, control, and direction of the attorney general. The board shall fix and determine the
18 compensation and period of service of the attorney who shall be paid out of the funds of the
19 board.

20 Section 19. The board shall receive complaints from its members, consumers, third party
21 carriers providing financial reimbursement for chemical dependency prevention or counseling
22 services, or the public concerning a practitioner's professional practices. Each complaint
23 received shall be logged by the secretary-treasurer recording the practitioner's name, name of
24 the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate

1 disposition. The board shall investigate each alleged violation of this Act. All disciplinary
2 proceedings held under the authority of this Act shall be conducted in accordance with chapter
3 1-26.

4 Section 20. The decision of the board to suspend or revoke a certification requires a majority
5 vote of all the board members.

6 Section 21. If the board determines that any complaint is frivolous or clearly unfounded in
7 fact, the board may dismiss the complaint and, by a separate and unanimous vote of the board,
8 may expunge the complaint from the record of the certified practitioner.

9 Section 22. Any practitioner subject to this Act shall practice in accordance with the
10 standards established by the board and is subject to the exercise of the disciplinary sanctions
11 enumerated in section 24 of this Act if, after a hearing in the manner provided in chapter 1-26,
12 the board finds that:

- 13 (1) A practitioner has employed or knowingly cooperated in fraud or material deception
14 in order to obtain a certification to practice the profession, or has engaged in fraud
15 or material deception in the course of professional services or activities;
- 16 (2) A practitioner has been convicted in any court of a felony;
- 17 (3) A practitioner has engaged in or permitted the performance of unacceptable patient
18 care by the practitioner or by auxiliaries working under the practitioner's supervision
19 due to any deliberate or negligent act or failure to act;
- 20 (4) A practitioner has knowingly violated any provision of this Act or board rules;
- 21 (5) A practitioner has continued to practice although the practitioner has become unfit
22 to practice due to professional incompetence, failure to keep abreast of current
23 professional theory or practice, physical or mental disability, or addiction or severe
24 dependency upon or use of alcohol or other drugs which endanger the public by

1 impairing a practitioner's ability to practice safely;

2 (6) A practitioner has engaged in lewd or immoral conduct in connection with the
3 delivery of chemical dependency or prevention services to consumers;

4 (7) A practitioner has or is employing or assisting an uncertified person to hold himself
5 or herself out as a certified chemical dependency counselor or certified prevention
6 specialist; or

7 (8) A practitioner has engaged in false or misleading advertising.

8 No suspension or revocation may be based on a judgment as to therapeutic value of any
9 individual treatment rendered, but only upon a repeated pattern or trend of treatment resulting
10 in unacceptable results.

11 Section 23. The board may, in a disciplinary proceeding, order a practitioner to submit to
12 a reasonable physical or mental examination if the practitioner's physical or mental capacity to
13 practice safely is at issue. Failure to comply with a board order to submit to a physical or mental
14 examination renders a practitioner liable to the summary revocation procedures described in
15 section 25 of this Act.

16 Section 24. The board may impose any of the following sanctions, singly or in combination,
17 if the board finds that a practitioner has violated any part of section 22 of this Act:

18 (1) Revoke a practitioner's certification to practice for an indefinite length of time;

19 (2) Suspend a practitioner's certification for a specific or indefinite length of time;

20 (3) Censure a practitioner;

21 (4) Issue a letter of reprimand;

22 (5) Place a practitioner on probationary status and require the practitioner to report
23 regularly to the board on the matters which are the basis for probation;

24 (6) Limit the practitioner's practice to areas prescribed by the board and continue to

1 renew professional education until a satisfactory degree of skill has been attained in
2 those areas which are the basis of the probation;

3 (7) Require the practitioner to reimburse the board in an amount equal to the costs
4 incurred for the investigation and disciplinary hearing.

5 The board may withdraw the probation if the board finds the deficiencies that resulted in
6 disciplinary action have been remedied.

7 Certification shall remain in effect during the pendency of an appeal unless suspended under
8 section 25 of this Act.

9 Section 25. The board may summarily suspend a practitioner's certification in advance of
10 a final adjudication or during the appeals process if the board finds that a practitioner would
11 represent a clear and immediate danger to the public health and safety if the practitioner were
12 allowed to continue to practice. A practitioner whose certification is suspended under this
13 section is entitled to a hearing before the board within twenty days after the effective date of the
14 suspension. The practitioner may subsequently appeal the suspension to circuit court in
15 accordance with chapter 1-26.

16 Section 26. Any practitioner whose certification or registration to practice has been
17 suspended or revoked may be reinstated or a new certification or registration may be issued, as
18 the case may be, if in the discretion of the board, such action is warranted. The board may
19 require the applicant to pay all costs of the proceedings resulting in the applicant's suspension
20 or revocation of certification or registration and reinstatement or new certification or
21 registration. In addition, the board may, by rule promulgated pursuant to chapter 1-26, require
22 a fee for reinstatement, not to exceed one hundred fifty dollars.

23 Section 27. In the prosecution of any person for violation of this Act, it is not necessary to
24 allege or prove lack of valid certification. Proof of certification or registration is a matter of

1 defense to be established by the defendant.

2 Section 28. Nothing in this Act may be construed to limit the ongoing certification of any
3 person at the level of certification and for the time period established under the former South
4 Dakota Chemical Dependency Counselor Certification Board doing business as the Certification
5 Board for Alcohol and Drug Professionals

6 Section 29. That subdivision (4) of § 34-20A-2 be amended to read as follows:

7 (4) "Chemical dependency counselor," a level II or III counselor certified by the South
8 Dakota ~~Chemical Dependency Counselor~~ Certification Board, ~~Incorporated for~~
9 Alcohol and Drug Professionals;

10